

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AJAY MALHOTRA,
Plaintiff,

v.

SONIM TECHNOLOGIES, INC., et al.,
Defendants.

Case No. 19-cv-06416-MMC

**ORDER AFFORDING OPPORTUNITY
TO FILE SURREPLY; VACATING
JANUARY 10, 2020 HEARING**

Before the Court are the following motions, each filed December 20, 2019:

(1) Motion "for Appointment as Lead Plaintiff and Approval of Lead Counsel," filed by David Sterrett ("Sterrett"); (2) Motion "for Appointment as Lead Plaintiff, and Approval of His Selection of Lead Counsel," filed by Lyndon Maither ("Maither"); and (3) Motion "for Appointment as Lead Plaintiff and Approval of Lead Counsel," filed by Ajay Malhotra and Andre Ling Bin Zulkifli ("Malhotra/Zulkifli"). Sterrett has filed opposition to Maither's motion, to which Maither has replied, and Maither has filed opposition to Sterrett's motion, to which Sterrett has replied. Malhotra/Zulkifli have filed a statement of non-opposition to the motions filed by the other movants. Having read and considered the papers filed in support of and in response to the above-referenced motions, the Court, as set forth below, finds it appropriate to afford Maither a limited opportunity to file a surreply in response to new material provided in support of Sterrett's reply.¹

In the instant complaint, Malhotra, on behalf of a putative class, alleges claims under Sections 11 and 15 of the Securities Act. The movants seek appointment as lead

¹The hearing scheduled for January 10, 2020, is hereby VACATED.

1 plaintiff for such class.

2 Under the Private Securities Litigation Reform Act, a district court "shall appoint as
3 lead plaintiff the member or members of the purported plaintiff class that the court
4 determines to be most capable of adequately representing the interests of class
5 members." See 15 U.S.C. § 77z-1(a)(3)(B)(i). "The 'most capable' plaintiff – and hence
6 the lead plaintiff – is the one who has the greatest financial stake in the outcome of the
7 case, so long as he meets the requirements of Rule 23 [of the Federal Rules of Civil
8 Procedure]," see In re Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002), "in particular, those
9 of 'typicality' and 'adequacy,'" see id. at 730 (quoting Rule 23).

10 Here, it is undisputed that Sterrett has the greatest loss. (See Heikali Decl. Ex. C
11 (asserting Sterrett's losses are \$43,441.90); Gilmore Decl. Ex. C (asserting Maither's
12 losses are between \$15,200.39 and \$19,951.65).) Additionally, there is no dispute, and
13 the Court finds, Sterrett's claims are typical of those of the class members, in that, like
14 other putative class members, (1) he purchased shares in defendant Sonim
15 Technologies, Inc. ("Sonim") after defendants allegedly made false and misleading
16 statements about Sonim's financial picture and (2) he continued to own such shares on
17 the date Sonim's share price allegedly fell in response to certain truthful disclosures
18 made by defendants. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998)
19 (holding "representative claims are 'typical' if they are reasonably co-extensive with those
20 of absent class members").

21 With respect to adequacy, Sterrett relies on the statements in his "Certification of
22 Proposed Lead Plaintiff" filed in support of his motion, and, in particular, on his
23 statements therein that he has selected experienced counsel to represent him,² he did
24 not purchase the subject securities at the direction of counsel, and he is willing to serve
25 as a representative plaintiff and to provide testimony in support of the class claims. (See


26
27 ²According to its resume, Faruqi & Faruqi, LLP, the firm selected by Sterrett, has
28 extensive experience representing plaintiffs in class action securities fraud litigation.
(See Heikali Decl. Ex. D.)

1 Heikali Decl. Ex. B.) In opposition to Sterrett's motion, Maither argues Sterrett's showing
2 nonetheless is deficient in that Sterrett did not provide in his motion "even the most basic
3 background information about himself." (See Maither's Opp. at 2:1-2.) Although Sterrett
4 contends such additional information is not required at this stage of the litigation, he has
5 filed in support of his reply a declaration in which he sets forth information about his
6 background, which facts, read in connection with the showing made in his motion, appear
7 sufficient to show Sterrett would be an adequate representative. As those additional
8 facts were not, however, provided prior to the reply, Maither has not had an opportunity to
9 respond.

10 Accordingly, if Maither wishes to file a surreply, limited to three pages in length
11 exclusive of exhibits, Maither shall file such response no later than January 15, 2020, as
12 of which date, unless the parties are otherwise advised, the motions will stand submitted.

13 **IT IS SO ORDERED.**

14
15 Dated: January 7, 2020

16 
17 MAXINE M. CHESNEY
18 United States District Judge
19
20
21
22
23
24
25
26
27
28